



# House of Representatives

General Assembly

**File No. 281**

February Session, 2022

Substitute House Bill No. 5357

*House of Representatives, April 4, 2022*

The Committee on Labor and Public Employees reported through REP. PORTER of the 94th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING MANDATORY OVERTIME FOR NURSES IN HOSPITALS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-490l of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2022*):

3 (a) As used in this section:

4 (1) "Nurse" means a registered nurse or a practical nurse licensed  
5 pursuant to chapter 378, or a nurse's aide registered pursuant to chapter  
6 378a; [and]

7 (2) "Hospital" has the same meaning as set forth in section 19a-490 [.]  
8 and includes a home health care agency, as defined in section 19a-490;  
9 and

10 (3) "Overtime" means working (A) in excess of a predetermined  
11 scheduled work shift, regardless of the length of the shift, provided such

12 scheduled work shift is determined and communicated not less than  
13 forty-eight hours prior to the commencement of such scheduled work  
14 shift, (B) more than twelve hours in a twenty-four-hour period, (C)  
15 during the ten-hour period immediately following the end of the  
16 previous shift of eight hours or more, or (D) more than forty-eight hours  
17 in any hospital-defined work week.

18 (b) [No] Except as provided in this section, no hospital may require a  
19 nurse to work [in excess of a predetermined scheduled work shift,  
20 provided such scheduled work shift is determined and promulgated not  
21 less than forty-eight hours prior to the commencement of such  
22 scheduled work shift] overtime. It shall be unlawful to discriminate,  
23 discharge, discipline, threaten to discipline or discharge or otherwise  
24 retaliate against a nurse for refusing to work overtime.

25 (c) Any nurse may volunteer or agree to work [hours in addition to  
26 such scheduled work shift but the refusal by a nurse to accept such  
27 additional hours shall not be grounds for discrimination, dismissal,  
28 discharge or any other penalty or employment decision adverse to the  
29 nurse] overtime. Notwithstanding the foregoing, a nurse shall not be  
30 permitted to work in excess of sixteen consecutive hours in a twenty-  
31 four-hour period. In the event a nurse works sixteen consecutive hours,  
32 such nurse shall be given not less than ten consecutive hours of off-duty  
33 time immediately following such sixteen-hour work period.

34 [(c) The] (d) Where the safety of a patient requires it, and when there  
35 is no reasonable alternative, the provisions of subsection (b) of this  
36 section shall not apply: (1) To any nurse participating in [a] an ongoing  
37 surgical procedure until such procedure is completed; (2) to any nurse  
38 working in a critical care unit, until such nurse is relieved by another  
39 nurse who is commencing a scheduled work shift; (3) in the case of a  
40 public health emergency; or (4) in the case of an institutional emergency,  
41 including, but not limited to, adverse weather conditions, catastrophe  
42 or widespread illness that, in the opinion of the hospital administrator,  
43 will significantly reduce the number of nurses available for a scheduled  
44 work shift, provided the hospital administrator has made a good faith

45 effort to mitigate the impact of such institutional emergency on the  
46 availability of nurses. [; or (5) to any nurse who is covered by a collective  
47 bargaining agreement that contains provisions addressing the issue of  
48 mandatory overtime.]

49 (e) Before requiring a nurse to work overtime, in accordance with the  
50 provisions of subsection (d) of this section, the hospital shall make a  
51 good faith effort to have such overtime hours covered on a voluntary  
52 basis. Mandatory overtime shall not be required as a regular practice for  
53 providing appropriate staffing for the necessary level of patient care or  
54 in any situation that is the result of routine staffing needs caused by  
55 typical staffing patterns, expected levels of absenteeism or time off  
56 typically approved by the hospital for vacation, holidays, sick leave and  
57 personal leave.

58 (f) Each hospital shall report all occurrences of mandatory overtime  
59 and the circumstances requiring its use to the Department of Public  
60 Health. Such reports shall be public documents. A copy of the report  
61 shall also be provided to the hospital's staffing committee. The report  
62 shall include: (1) The date of occurrence, (2) an occurrence narrative that  
63 includes the type of situation set forth in subsection (d) of this section  
64 permitting the use of such mandatory overtime or certification that the  
65 mandatory overtime was permitted under subsection (h) of this section,  
66 (3) the number of hours of mandatory overtime the nurse was required  
67 to work, and (4) a certification that the mandatory overtime was  
68 required for patient safety, there was no reasonable alternative to  
69 mandatory overtime and the hospital made a good faith effort to seek  
70 volunteers.

71 (g) Any nurse or group of nurses may file a civil action against a  
72 hospital that violates any provision of this section. Any nurse or group  
73 of nurses that prevails in any such action shall be awarded actual  
74 damages, removal of any discipline from the employee's personnel file,  
75 attorney's fees and statutory damages not less than two hundred fifty  
76 dollars or more than one thousand dollars for each violation of  
77 subsections (b), (c) and (e) of this section and not less than one hundred

78 dollars or more than five hundred dollars for each violation of  
 79 subsection (f) of this section. Such nurse or group of nurses shall also be  
 80 awarded reinstatement to their job or jobs with backpay if no longer  
 81 employed by the hospital.

82 (h) (1) The provisions of this section shall not be construed to alter or  
 83 impair the terms of any bona fide collective bargaining agreement that  
 84 places additional restrictions or limitations on the use of mandatory  
 85 overtime.

86 (2) The provisions of subsection (b) of this section shall not prohibit  
 87 mandatory overtime with respect to any nurse who is covered by a bona  
 88 fide collective bargaining agreement in effect before July 1, 2022, that  
 89 contains provisions addressing the issue of mandatory overtime until  
 90 the expiration date of the collective bargaining agreement.

91 (3) The provisions of subsection (b) of this section shall not prohibit  
 92 mandatory overtime with respect to any nurse who is covered by a bona  
 93 fide collective bargaining agreement under chapter 68 to the extent such  
 94 collective bargaining agreement permits mandatory overtime, provided  
 95 mandatory overtime for reasons set forth in subsection (d) of this section  
 96 shall be a mandatory subject of bargaining, and mandatory overtime for  
 97 reasons other than those set forth in subsection (d) of this section shall  
 98 be a permissible subject of bargaining.

This act shall take effect as follows and shall amend the following sections:

Section 1	July 1, 2022	19a-490l
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**Statement of Legislative Commissioners:**

In Section 1(f)(2) "such" was added before "mandatory" for clarity and "that" was removed before "certification" for clarity and, in Section 1(g) "removal of any discipline from file" was changed to "removal of any discipline from the employee's personnel file" for clarity.

**LAB**      *Joint Favorable Subst.*

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

## **OFA Fiscal Note**

### **State Impact:**

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
UConn Health Ctr.	Various - Cost	Potential Significant	Potential Significant

Note: Various=Various

**Municipal Impact:** None

### **Explanation**

The bill, which establishes requirements regarding nurse mandatory overtime in hospitals, results in a potentially significant fiscal impact to UConn Health Center annually beginning in FY 23, as described below.

**Mandatory overtime as regular practice.** The bill prohibits hospitals from using mandatory overtime as a regular practice and establishes a process of reporting and enforcement. These provisions of the bill may have a significant impact on UConn Health Center as the hospital uses mandatory overtime with some frequency, when voluntary overtime is insufficient to meet staffing needs. (The hospital has numerous nurse vacancies that it is attempting to fill.) If any UConn Health Center nurses file a civil action under the bill's provisions, there may be significant additional legal costs to the health center, along with financial penalties to the hospital that are prescribed in the bill if the action is successful.

**Mandatory overtime prohibition.** The bill's general prohibition of mandatory overtime for nurses does not apply to UConn Health because the bill exempts state entities when certain topics are

collectively bargained, as they are at UConn Health.

**Off-duty following 16 consecutive hours.** The bill's requirement to provide a nurse who works 16 consecutive hours with the following ten hours off-duty is anticipated to result in a minimal fiscal impact to UConn Health. Currently, it is rare for a nurse to work 16 consecutive hours but one who does may be expected to return within eight hours if so scheduled. Consequently, in any such situation UConn Health will need to pay for additional coverage of two hours, at an average cost of \$74 per two hours, to provide the required ten hours off-duty. This is anticipated to occur only in exceptional circumstances.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 5357*****AN ACT CONCERNING MANDATORY OVERTIME FOR NURSES IN HOSPITALS.*****SUMMARY**

This bill generally expands restrictions on hospitals' ability to require nurses to work overtime and also applies the restrictions to home health care agencies. It places new conditions on how and when overtime can be worked or required, and it prohibits any retaliation against a nurse who refuses to work overtime. The bill also requires hospitals and home health care agencies to report all mandatory overtime occurrences to the Department of Public Health (DPH). Additionally, it creates a new enforcement mechanism for potential violations.

Current law prohibits hospitals from requiring a nurse to work more than a predetermined scheduled work shift as long as the shift is determined and communicated at least 48 hours before it starts. The bill categorizes this excess work as overtime, regardless of the shift length, and prohibits hospitals and home health care agencies from requiring nurses to work overtime, with certain exceptions. It also expands the prohibition by additionally categorizing as overtime working (1) more than 12 hours in a 24-hour period, (2) during the 10-hour period immediately following a previous shift of at least eight hours, or (3) more than 48 hours in any hospital-defined work week.

Current law prohibits hospitals from using a nurse's refusal to accept additional hours as grounds for discrimination, dismissal, discharge, or any other penalty or adverse employment decision. Similarly, the bill prohibits hospitals and home health care agencies from discriminating, discharging, disciplining, threatening to discipline or discharge, or otherwise retaliating against a nurse for refusing to work overtime.

Current law allows nurses to volunteer to work hours in addition to

their scheduled work shifts. The bill similarly allows nurses to volunteer to work overtime, but it prohibits them from being allowed to work more than 16 consecutive hours in a 24-hour period. The bill also requires that nurses have at least 10 consecutive off-duty hours after working 16 consecutive hours.

Current law establishes several exceptions to the prohibition on mandatory excess hours. The bill generally retains these exceptions with respect to mandatory overtime, but only when a patient's safety requires it and there is no reasonable alternative. The bill also requires hospitals and home health care agencies to make a good faith effort to cover the overtime hours on a voluntary basis before requiring a nurse to work overtime.

Under the bill, as under current law, nurses include registered nurses, licensed practical nurses, and nurse's aides.

EFFECTIVE DATE: July 1, 2022

## **EXCEPTIONS TO PROHIBITION ON MANDATORY OVERTIME**

Current law allows nurses to work excess hours if:

1. they are participating in a surgical procedure;
2. they are working in a critical care unit, until they are relieved by another nurse starting a scheduled work shift;
3. it is a public health emergency; or
4. it is an institutional emergency (e.g., adverse weather conditions, catastrophe, or widespread illness) that, in the hospital administrator's opinion, will significantly reduce the number of nurses available for a scheduled work shift, as long as the hospital administrator has made a good faith effort to mitigate the institutional emergency's impact on nurse availability.

The bill generally retains these exceptions and applies them to its prohibition on mandatory overtime. The bill specifies that the exception for nurses participating in surgical procedures applies to ongoing



procedures.

Additionally, the bill prohibits hospitals and home health care agencies from requiring mandatory overtime (1) as a regular practice to provide appropriate staffing for the necessary level of patient care or (2) in any situation resulting from routine staffing needs caused by typical staffing patterns, expected absenteeism levels, or approved time off (i.e., vacation, holidays, sick leave, and personal leave).

### ***Collective Bargaining Agreements***

Current law also exempts from the prohibition any nurse covered by a collective bargaining agreement that contains provisions addressing mandatory overtime. The bill instead exempts any nurse covered by a bona fide collective bargaining agreement (1) in effect before July 1, 2022, that addresses mandatory overtime until the agreement expires or (2) that applies to state employees, to the extent the agreement permits mandatory overtime. In the latter case, mandatory overtime (1) for reasons exempted from the bill's prohibition is a mandatory subject of bargaining and (2) for all other reasons is a permissible subject of bargaining.

The bill prohibits its provisions from being construed to alter or impair a bona fide collective bargaining agreement's terms that additionally restrict or limit mandatory overtime.

### **REPORTING REQUIREMENT**

The bill requires that each hospital and home health care agency (1) report to DPH all mandatory overtime occurrences and the circumstances under which mandatory overtime was required and (2) provide a copy of the report to the hospital's or agency's staffing committee. (It is unclear whether home health care agencies have staffing committees. Also, the bill does not specify how frequently the hospitals and agencies must file reports and provide copies.)

Under the bill, the reports are public documents and must include the following information:

1. the occurrence's date;

2. an occurrence narrative, including the type of exception that permitted the hospital or agency to use mandatory overtime or certification that the mandatory overtime was permitted under the exceptions for collective bargaining (see above);
3. how many mandatory overtime hours the nurse was required to work; and
4. a certification that the mandatory overtime was required for patient safety, there was no reasonable alternative to mandatory overtime, and the hospital or agency made a good faith effort to seek volunteers.

## PENALTIES

The bill allows any nurse or group of nurses to file a civil action against a hospital or home health care agency that violates the bill's provisions. Under the bill, a nurse or group that prevails in a civil action must be awarded actual damages, removal of any discipline from the employee's personnel file, attorney's fees, and the following statutory damages:

1. for violations of the bill's provisions prohibiting mandatory overtime, restricting voluntary overtime, and requiring a good faith effort to cover hours on a voluntary basis before requiring mandatory overtime, at least \$250 and up to \$1,000 for each violation; and
2. for violations of the bill's reporting requirement, at least \$100 and up to \$500 for each violation.

Under the bill, nurses or groups of nurses who prevail in a civil action but are no longer employed by the hospital or agency must be awarded reinstatement to their jobs with backpay.

## COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 4 (03/22/2022)